



## **REQUEST FOR QUALIFICATIONS**

### **RFQ: PUBLIC/PRIVATE PARTNERSHIP HIGH DENSITY URBAN MIXED USE DEVELOPMENT OPPORTUNITY**

**180 PARK AVENUE**

**RFQ NAME: RFQ-OED-PARK-AVE-FEB2015**

**February 9, 2015**

## INTRODUCTION

### City of San Jose. The Capital of Opportunity.

The City of San Jose's Office of Economic Development (OED) is committed to driving a vital and competitive economy that increases prosperity and quality of life for our residents and businesses. OED guides the City's economic strategy, provides business assistance, connects employers to a highly skilled workforce, and supports art and cultural resources to inspire our community.

## PURPOSE

The purpose of this RFQ is to request expressions of interest that demonstrate a development firm's qualifications to enter into a collaborative public/private partnership with the City of San Jose, leading to the development of a high-quality, high-rise, urban mixed-use project, which shall include the demolition, redesign, and replacement of the City-owned property known as Parkside Hall. The City will evaluate expressions of interest based on the criteria in Attachment B. Responses to this RFQ will enable the City to evaluate and determine the firm that best fits the evaluation criteria listed within this document. The City's intent is to enter into an Exclusive Negotiation Agreement (Reference Attachment D) with the winning respondent.

## TIMELINE:

<b>RFQ release date:</b>	February 9, 2015
<b>Contact name:</b> <b>Address:</b>	Alfredo Iraheta Office of Economic Development 200 E. Santa Clara, 17 <sup>th</sup> Floor San Jose, CA 95113
<b>Phone:</b>	408-975-8174
<b>Fax:</b>	408-293-2617
<b>E-mail address:</b>	<a href="mailto:alfredo.iraheta@sanjoseca.gov">alfredo.iraheta@sanjoseca.gov</a>
<b>Deadline for questions and objections:</b> (please post all questions directly on the BidSync System at any time prior to the deadline)	February 23, 2015      5:00 PM
<b>RFQ Due Date &amp; Time:</b>	March 20, 2015      5:00 PM One digital copy and ten (10) hard copies shall be sent to the address below.
<b>Location:</b>	Office of Economic Development (Hard Copies) 200 E. Santa Clara, 17 <sup>th</sup> Floor San Jose, CA 95113
<b>E-mail address:</b>	<a href="mailto:alfredo.iraheta@sanjoseca.gov">alfredo.iraheta@sanjoseca.gov</a> (Digital Copy)
<b>Developer Interviews (if necessary)</b> <b>Date &amp; Time:</b>	1st Week in April, 2015      TBD.
<b>Location:</b>	Office of Economic Development 200 E. Santa Clara, 17 <sup>th</sup> Floor San Jose, CA 95113
<b>Staff Identification of Proposer:</b>	Two weeks after above Interviews

## THE OPPORTUNITY

### I. SITE DESCRIPTION

The potential development site consists of the City-owned property commonly referred to as Parkside Hall, located at 180 Park Avenue. The following summary further describes the property and highlights the possible opportunities:

- Located directly across from the Convention Center, The Tech Museum, San Jose Civic Auditorium, and The Center for the Performing Arts, including area hotels, restaurants and Class A office buildings.
- The development site is currently home to Parkside Hall, which is an approximate 42,550 sq. ft. exhibition and banquet space further defined below. However, for purposes of this RFQ, the site could be expanded to approximately 50,000 to 70,000+ sq.ft. This could be achieved by capturing a portion of the land behind the building currently used for loading, utilizing the existing pedestrian paseo, and pushing the building footprint to the property line at the street. The proposed increased site area is based on available data, subject to final determination and approval by the City, the Tech Museum, and the selected development firm. (Reference aerial approximation on Exhibit A and approximated Block Plans on Exhibit B)
- There are no minimum setback requirements for sites within the Downtown zoning district; therefore, the developable envelope includes everything up to the property lines. (Reference Approximated Block Plan on Exhibit B)
- As referenced above, the paseo area adjacent to Parkside Hall could also be included in the developable envelope. In order to do so the project would have to provide "high quality public realm and connectivity to and through the site and pedestrian pathways." Among other reasons, this is required in order to ensure conformance with the City's Downtown Strategy 2000, which has goals for the paseo network in downtown. (Reference additional Approximated Block Plan on Exhibit B-1)
- The site's zoning is "Downtown Commercial". No rezoning may be necessary for permitted uses, which include office, hotel, residential and retail.
- The 2040 General Plan designation for the site is "Public-Quasi-Public. The City could self initiate a General Plan amendment to change the General Plan land use designation for the site to Downtown.
- Based on the 2040 General Plan Designation and FAA height limitations, the approximate allowable building height is up to 270 feet above ground, dependent on the proposed architectural design clearance.
- Environmental clearance for the site is provided through the City's Downtown Strategy 2000 program level EIR (Resolution Number 72767) however, project specific environmental clearance will be necessary.
- Not a part of the City's Historic Resources Inventory (HRI).

Parkside Hall is further described as:

- Directly adjacent to and considered a vital component of The Tech Museum, which holds a lease on the Parkside Hall.

- Reconstruction and Incorporation of Parkside Hall into the development project are required.
- Approximate current footprint is 42,550 sq. ft., which includes approximately 30,000 sq. ft. of flexible column free space.
- The Tech Museum, which would utilize the space, requires the usable space size after reconstruction to be approximately 60,000+ sq. ft. A suggested design approach by the Tech Museum is for Parkside Hall to be two levels, whereby the floor and ceiling heights align with that of the existing Tech Museum. The first floor would provide a lobby and management office for the office or residential tenants, as well as clear span space that could accommodate a 12,000 SF temporary exhibit area, an auditorium, storage, loading docks, group meeting/gathering area, and a café/retail use. The second floor would be exhibit space, conference rooms, labs for school groups, and administrative offices for the museum. Lastly, the Tech Museum has requested the incorporation of parking into the design of the project that would be made available, either shared or exclusive, for the Tech's parking needs.
- The space is currently used for banquets of up to 1,840 people, theater style seating of up to 3,000 people, and Exhibit halls of 18,000 and 12,000 sq. ft. (combined area of 30,000 sq. ft.)
- Redeveloped Parkside Hall should act as a significant contribution to the mixed use project.

## **II. DESIRED DEVELOPMENT TEAM**

The desired outcome of this RFQ is to identify a Development Team that has the demonstrated experience and ability, within a Public Private partnership, to finance, construct and deliver the following:

- A signature/high profile/mixed use development, which could include;
  - ✓ Class A Office Tower and/or Hotel
  - ✓ High Rise Residential Tower
- Reconstruction and expansion of the City owned Parkside Hall to 60,000 sq. ft., in a modern functional fashion, which will help facilitate the operation of the adjacent Tech Museum.
- Parking capable of serving both the proposed development and Parkside Hall.
- High quality public realm, connectivity to and through the site and pedestrian pathways.

## **III. SITE OWNERSHIP AND FINANCIAL STRUCTURING**

For purposes of this RFQ, the proposed development site and ownership is defined as:

- City owns Parkside Hall, which currently consists of approximately 42,550 square feet, a portion of the rear loading area (which area is to be defined), a portion of the directly adjacent pedestrian walkways, and possibly pushing the building footprint out closest to Park Avenue.
- To further increase the development site envelope beyond what is approximated on the attached Exhibit B and B-1, the proposals may include the narrowing of Park Avenue to one lane in each direction.

- Parkside Hall is subject to the following:
  - ✓ A long term lease with the Tech Museum.
  - ✓ At present the approximated development site is a part of a single parcel identified as APN 259-42-23, which includes several City owned buildings. (Reference Exhibit C) Therefore, a new parcel map will need to be created and approved by the City.
- The City is open to various financial structure options with a Developer, including but not limited to:
  - ✓ City selling a fee interest or ground leasing, and then leasing back the reconstructed Parkside Hall.
  - ✓ City trading fee interest in property for reconstructed Parkside Hall.
  - ✓ Reconstruction cost of Parkside Hall may be offset by the value of City owned parcel.

#### **IV. DEVELOPER REQUIREMENTS**

As defined in Attachment B, the Developer will provide a conceptual description of the project, at no cost to the City, which should include, but not be limited to the following:

- The suggested building area and design designated for Parkside Hall and all on the site.
- Approximate dimensions and floor area of tenant spaces/building.
- Information on where the parking will be located; how many parking spaces will be required by tenants. Show what parking spaces will be restricted to tenants, such as residents, and what will be open to public. Discuss the potential for shared parking and/or linking to public parking facilities, including delineating the path of travel.
- If applicable Include information on required rent for office space and proposed tenant improvements or allowance available to tenants.
- What LEED designation the project seeks, if any.
- Information about proposed project quality with regard to design, finishes and fixtures; submit photos of similar standards and quality.
- Conceptual business terms based upon the proposed structure of the public/private partnership, including the time frames/steps necessary for development.

The City shall not be liable for any real estate commission or brokerage fee that may arise from the transfer of any of the property.

Furthermore, depending on the structure and economics of the deal, the developer may need to comply with public bidding requirements under the City charter and prevailing wage requirements under local, state or federal laws. Lastly, the developer will need to comply with all other laws and regulations applicable to the proposed project.

#### **V. SELECTION PROCESS AND ENTITLEMENTS**

The anticipated process regarding this RFQ shall include Council approval of the following:

- Selection of a developer through the criteria established within this RFQ.
- Determine suggested project land use, design, and feasibility.
- Establish an estimated timeline for completion of the project.
- Establish due diligence period.
- Develop Business terms for the City owned parcel.

- Developer enters the Exclusive Negotiations Agreement. Contractual agreement for conveyance of site.

## Entitlements

Final environmental clearance will be required prior to approval of any project and shall be the responsibility of the developer; however, it may be possible to use the City of San Jose Downtown Program level EIR depending on the proposed project. Zoning for the site is Downtown Commercial. Any project not meeting the existing zoning will require additional zoning modifications by the developer.

## CONTACT

Please direct all inquiries via BidSync. Contact with representative(s) other than name listed in this RFQ is grounds for disqualification.

## QUESTIONS

Please post all questions on the Bidsync system on or before February 23, 2015. The City shall respond to questions on Bidsync by March 9, 2015. City responses to all such questions shall be considered formal addenda to this RFQ.

## RESPONSE REQUIREMENTS

This Request for Qualifications is the first step in the development of the Site. Response requirements to this RFQ are specifically defined in the Attachment B. However, in general all responses should demonstrate the developer's understanding, experience and specific examples of working within a public/ private partnership, and in developing downtown high quality, high rise urban mixed use projects, which could incorporate housing, retail, a community function like Parkside Hall and/or office and hotel uses.

## HOW TO SUBMIT YOUR RESPONSE

Please submit the information requested above and as defined in Attachment B, directly to the City of San Jose, through the contact person and address provided above in the Timeline. **Wherever possible, please consolidate your response into one file in order to facilitate distribution and review by the City.**

## EVALUATION AND NEXT STEPS

City staff will review all submissions and evaluate for:

Proposal Responsiveness	Pass/Fail
Developer Minimum Qualifications	Pass/Fail
Financial Capacity and Ability to Finance Project	40%
Vision Statement/Conceptual Project Description	25%
Assembled Team with Similar Project Experience	15%
Public/Private Partnership Experience	10%
Local Business Preference	5%
Small Business Preference	5%

City Staff will determine the final award recommendation based on responses that represent the highest scores to the information requested in this RFQ and any follow up discussions or presentations as requested by the City.

## **CONFLICT OF INTEREST**

The selected Developer will be required to complete a Form 700 / Statement of Economic Interest. The Form 700 must be submitted prior to award of final contract. Instructions and information may be viewed at: <http://sanjoseca.gov/index.aspx?NID=2913>

Form 700 / Statement of Economic Interest, includes disclosure of the following:

1. Schedule A - 1 -- Investments.
2. Schedule A - 2 -- Investments, Income and Assets of Business Entities/Trusts.
3. Schedule B -- Interests in Real Property.
4. Schedule C -- Income and Business Positions.
5. Schedule D -- Income - Loans.
6. Schedule E -- Income - Gifts.
7. Schedule F -- Income - Gifts; Travel Payments, Advances and Reimbursements.

## **LOCAL AND SMALL BUSINESS PREFERENCE**

Chapter 4.12 of the San Jose Municipal Code includes a preference for Local and Small Businesses in the procurement of contracts for supplies, materials and equipment and for general and professional consulting services. The amount of the preference shall be 5 points if the business is local and an additional 5 points if the business is small. In order for the Proposer to be eligible for local and/or small business preference, the Proposer must complete Attachment A, Request for Contracting Preference for Local and Small Businesses. If the Proposer fails to complete this form and submit it with the proposal, the Proposer will be denied consideration for local/small business preference. This information cannot be submitted later.

## **THE USE TAX INCENTIVE PROGRAM**

The selected development entity will be required to participate in City's Use Tax Incentive Program. This program allows companies to receive a rebate on a portion of Use Tax applicable to out-of-state taxable transactions destined for use in the City of San Jose. The California State Board of Equalization allocates Use Tax from out-of- state purchases into tax pools rather than to the City where the purchase will reside. Working in partnership with the City, participating companies can allocate these purchases and the associated Use Tax directly to San Jose and then receive a 20-30% rebate by the City. (Reference Attachment C)

## **INCLUSIONARY HOUSING**

San Jose's Inclusionary Policy applies to all new "for-sale" residential developments with 11 or more units built within redevelopment project areas in the City of San Jose. The Site identified in this RFQ is located within the Park Center Redevelopment Project Area. Therefore, any housing project that is part of a proposal may be subject to the requirements of the City's Inclusionary Requirements. However, if the proposed project contains residential "rental" units, the current pipeline allows for an exemption to the inclusionary requirement if the project is built or permitted before June 31, 2016. More detailed information about the City's Inclusionary Housing Policy can be found on the City's website at: <http://www.sanjoseca.gov/index.aspx?NID=1307>

## **PUBLIC NATURE OF PROPOSAL MATERIAL**

All correspondence with the City including responses to this RFQ will become the exclusive property of the City and may be public records under the California Public Records Act (Cal.

Government Code section 6250 et seq.) All documents that you send to the City will be subject to disclosure if requested by a member of the public. There are a very limited number of narrow exceptions to this disclosure requirement. The City will not disclose any part of any proposal before it announces a recommendation for selection, on the ground that there is a substantial public interest in not disclosing proposals during the evaluation process. After the announcement of a recommended selection, all proposals received in response to this RFQ will be subject to public disclosure. If you believe that there are portion(s) of your proposal which are exempt from disclosure under the Public Records Act, you must mark it as such and state the specific provision in the Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. For example, if you submit information you believe to be trade secrets, you must plainly mark the information as "Trade Secret" and refer to the appropriate section of the Public records Act which provides the exemption as well as the factual basis for claiming the exemption.

Although the California Public Records Act recognizes that certain confidential trade secret information may be protected from disclosure, the City of San José may not be in a position to establish that the information that a Proposer submits is a trade secret. If a request is made for information marked "Confidential", "Trade Secret" or "Proprietary", the City will provide Proposers who submitted the information with reasonable notice to seek protection from disclosure by a court of competent jurisdiction.

## **GENERAL INFORMATION**

The recommended firm will be required to negotiate a final Exclusive Negotiation Agreement (Reference Attachment D) and other documents with the City in conformance to the City's standard terms and conditions which will all be subject to City Council approval. All costs associated with responding to this request are to be borne by the Proposer/Developer. It is the City's policy that the selected firm shall not discriminate, in any way, against any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity, or national origin, in connection with or related to the performance of City of San José contracts. The City Manager's Office shall approve any such documents and will make a recommendation to the City Council for its consideration. The City reserves the right to accept or reject any item or group(s) of items of a response. The City also reserves the right to waive any informality or irregularity in any proposal. Additionally, the City may, for any reason, decide not to select a proposal as a result of this RFQ or cancel the RFQ. The City shall not be obligated to respond to any proposal submitted, nor be legally bound in any manner by submission of the proposal. The City is not required to accept the lowest price proposal. Responses will be evaluated to determine the highest scores to the information requested and any follow up discussions or presentations as requested by the City. Statistical information contained in this RFQ is for informational purposes only. The City shall not be responsible for the complete accuracy of said data. The City reserves the right to verify any information provided during the RFQ process and may contact references listed or any other persons known to have contracted with the Proposer.

## **GROUND FOR DISQUALIFICATION**

All Proposers are expected to have read and understood Council Policy 0-35 titled Procurement and Contract Process Integrity and Conflict of Interest adopted on February 6, 2007. A complete copy of the policy can be found at: [http://www.sanjoseca.gov/clerk/cp\\_manual/CPM\\_0\\_35.pdf](http://www.sanjoseca.gov/clerk/cp_manual/CPM_0_35.pdf) Any proposer who violates the Policy will be subject to disqualification. Generally, the grounds for disqualification include:

**1.1.1.1** Contact regarding this procurement with any City official or employee or Evaluation team other than the Procurement Contact from the time of issuance of this solicitation until the end of the protest period.



- 1.1.2 Evidence of collusion, directly or indirectly, among Proposers in regard to the amount, terms, or conditions of this proposal.
- 1.1.3 Influencing any City staff member or evaluation team member throughout the solicitation process, including the development of specifications.
- 1.1.4 Evidence of submitting incorrect information in the response to a solicitation or misrepresent or fail to disclose material facts during the evaluation process.

In addition to violations of the Process Integrity Guidelines, the following conduct may also result in disqualification:

- 1.1.5 Offering gifts or souvenirs, even of minimal value, to City officers or employees.
- 1.1.6 Existence of any lawsuit, unresolved contractual claim or dispute between Proposer and the City.
- 1.1.7 Evidence of Proposer's inability to successfully complete the responsibilities and obligations of the proposal.
- 1.1.8 Proposer's default under any City agreement, resulting in termination of such Agreement.

## **PROTESTS**

If an unsuccessful Proposer wants to dispute the award recommendation, the Protest must be submitted in writing to Ms. Kim Walesh no later than ten calendar days after announcement of the successful Proposer, detailing the grounds, factual basis and providing all supporting information. Protests will not be considered for disputes of proposal requirements and specifications, which must be addressed in accordance with the above Section. Failure to submit a timely written Protest to the contact listed below will bar consideration of the Protest.

The address for submitting protests is:

Attention: Kim Walesh  
Deputy City Manager and Director of Economic Development  
City of San Jose  
200 East Santa Clara Street, 17th Floor  
San Jose, CA 95113

**ATTACHMENT A**  
**City of San Jose**  
**Request for Contracting Preference for Local and Small Businesses**

Chapter 4.12 of the San Jose Municipal Code provides for a preference for Local and Small Businesses in the procurement of contracts for supplies, materials and equipment and for general and professional consulting services. The amount of the preference depends on whether the vendor qualifies as a Local Business Enterprise\* or Small Business Enterprise\*\* and whether price has been chosen as the determinative factor in the selection of the vendor.

In order to be a Local Business Enterprise (LBE) you must have a current San Jose Business Tax Certificate Number and have an office in Santa Clara County with at least one employee. If you qualify as an LBE you can also qualify as a Small Business Enterprise (SBE) if the total number of employees (*regardless of where they are located*) of your firm is 35 or fewer.

There are two ways in which the preference can be applied. In procurements where price is the determinative factor (*i.e. there are not a variety of other factors being considered in the selection process*) the preference is in the form of a credit applied to the **dollar value** of the bid or quote. For example, a non-local vendor submits a quote of \$200 per item and a LBE submits a quote of \$204 per item. The LBE receives a 2.5% credit on the quote, which equals approximately \$5 and thus the LBE will win the award because the quote is evaluated as if it had been submitted as \$199.

In procurements such as RFP there are usually a variety of factors evaluated to determine which proposal best meets the City's needs. In procurements such as these where price is not the determinative factor, an LBE or SBE will be given an **additional 5% to 10% points** in the **scoring** of their proposal.

The following determinations have been made with respect to this procurement: (for official use only)

<b>Type of Procurement</b>	<input type="checkbox"/> Bid	<input type="checkbox"/> Request for Quote	<input checked="" type="checkbox"/> Request for Proposal
<b>Type of Preference</b>	<input type="checkbox"/> Price is Determinative		
<b>Amount of Preference</b>	<input checked="" type="checkbox"/> Price is Not Determinative		
	LBE preference = 2.5% of <b>Cost</b>		LBE preference = 5% of <b>Points</b>
	SBE preference = 2.5% of <b>Cost</b>		SBE preference = 5% of <b>Points</b>

**In order to be considered for any preference you must fill out the following statement(s) under penalty of perjury.**

<b>Business Name</b>			
<b>Business Address</b>			
<b>Telephone No.</b>			
<b>Type of Business</b>	<input type="checkbox"/> Corporation	<input type="checkbox"/> LLC	<input type="checkbox"/> LLP
	<input type="checkbox"/> General Partnership	<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Other (explain)

**\*LOCAL BUSINESS ENTERPRISE (LBE) PREFERENCE**

In order to qualify as an LBE you must provide the following information:

<b>Current San Jose Business Tax Certificate Number:</b>	
<b>Address of Principal Business Office or Regional, Branch or Satellite Office with at least one employee located in Santa Clara County:</b>	

**\*\*SMALL BUSINESS ENTERPRISE (SBE) PREFERENCE**

In order to qualify as an SBE you must qualify as an LBE and have 35 or fewer employees. This number is for your **entire** business --NOT just local employees, or employees working in the office address given above.

**Please state the number of employees that your Business has:**

Based upon the forgoing information I am requesting that the Business named above be given the following preferences (*please check*): ☐ Local Business Enterprise ☐ Small Business Enterprise

I declare under penalty of perjury that the information supplied by me in this form is true and correct.

Executed at: \_\_\_\_\_, California

Date: \_\_\_\_\_

Signature \_\_\_\_\_

Print name \_\_\_\_\_

## **ATTACHMENT B**

### **RESPONSE REQUIREMENTS**

To respond to this RFQ, please submit ten (10) numbered sets of the information (hard copies) and one electronic copy of the information requested below. In addition, two copies of Financial Capacity materials must be submitted under separate cover, sealed, to: Office of Economic Development, 200 E. Santa Clara, 17<sup>th</sup> Floor, San Jose, CA 95113

**All materials must be delivered no later than 5:00 pm PDT on March 20, 2015.** Please submit materials in keeping with the following format, identifying each item by letter and number.

#### **1. Development Entity**

- a) Describe the development entity and identify the members, with names, addresses and phone numbers of key representatives. Provide relevant qualifications and project specific experience of the principals of the development entity. Identify the person or persons with the authority to represent and make legally binding commitments on behalf of the development entity. Identify the contractual relationship among the any multiple developers, if appropriate.
- b) Identify the known team members (e.g. architects, engineers, legal representatives, commercial tenants, and hotel operator, real estate brokers/marketing representatives, retail consultants, and contractor).

#### **2. Developer Experience**

A minimum of five (5) years of similar project experience is required. Under the minimum experience threshold, describe relevant project experience with developments of high density urban form and character, and developments involving public or cultural entities with a particular focus on mixed-use urban developments in downtown locations. Provide three (3) or more examples that demonstrate successful residential/office/hotel projects in urban environments, as well as projects that incorporate a mixed use within the development. Please note that financial capacity, project financing, and the ability to deliver against a proven schedule of performance are critical aspects of the evaluation:

Please include the following information for each past project identified:

- a) Location and photographs of the projects.
- b) General description of the project including the role of the development entity, a brief history of the project, and any unique challenges of the project. Identify the number of units, the mix of units, the unit sizes, the number of square feet of retail space, the tenant list upon stabilization, and any customer survey/satisfaction information.
- c) For residential projects identify whether the project was a for-sale or rental development, and whether below-market-rate units were included.
- d) Present the total development cost, identify the amount of debt and the amount of equity used to finance project, and economic return(s) achieved.

- e) For ownership projects: identify the sales prices achieved and the absorption period required for the project.
- f) For rental projects, identify the current management/owner; provide the most recent profit/loss statement; identify the lease-up period, historic and current vacancy rates, etc.
- g) For mixed-use projects identify the lease up period and the type of commercial and/or retail tenants selected. Describe the relationship with retail/commercial tenant(s) and the approach used to incorporate retail/commercial uses into the project; such as leasing strategy and physical accommodations, such as venting, use of outdoor space, seating, trash service, loading and parking.
- h) Document the success achieved in the area of buyer/renter satisfaction regarding the period after the sale or leasing of the unit.
- i) Identify any community uses incorporated into the project, or other benefits to the community at large or the specific neighborhood, which were part of or resulted from the project, including their associated financial structures.
- j) State whether or not development was undertaken in conjunction with public or cultural entities, with reference/contact information.
- k) Identify successful community outreach efforts and working relationships achieved with the neighborhood, and identify ways in which the project benefited the surrounding community.
- l) Identify the key development team members of the project. If any team members are different from the team being proposed for this project, provide an explanation of why the new team member(s) were selected.
- m) Discuss the project's schedule and whether the project was on schedule and within budget.
- n) Discussion of the project successes, including achievement of project specific goals. Provide any supporting documentation demonstrating success in buyer/renter satisfaction regarding after-sale/ongoing property maintenance/management and operations for the uses proposed by the developer, as appropriate. Discuss the approach to parking, and if it was shared, how it was managed.

### **3. Project Proposal**

A Vision Statement describing the proposed project that is in line with the City's specific goals stated in "The Opportunity". Suggestions of items to include are as follows:

- The conceptual project proposal should identify/define;
  - Best approach to maximize value and deliver Parkside Hall as an integral part of the project.
  - Will the project include residential units for sale or rental? What other land use components will be included?

- Describe the conceptual project in terms of height/stories, building envelope, design elements and quality, number and type of residential units (if applicable), size and placement of retail space (if applicable), including the type of retail tenants, parking ratio, etc.
- How would the project utilize Park Avenue?
- How would the Parkside Hall space be designed/incorporated without compromising the project?
- How would the desired parking be incorporated/delivered, shared, and alternative transportation modes be encouraged?
- How would you address the potential of the inclusionary requirement?
- Is there a comparable project in the marketplace?
- What is the proposed development schedule?
- Provide a strategy for the real estate transaction/structure;
  - Approach regarding the public/private structure. Fee purchase? Ground Lease?
  - Reconstructed Parkside Hall shall be conveyed to City as: condominium unit or long-term lease?
  - Because the City requires that the development economics support the cost to reconstruct Parkside Hall, will it be delivered as finished space?
  - Define how development economics will fund maintenance and capital reserve costs for public spaces and Parkside Hall.
- Provide the conceptual business terms for the City;
  - How would the value of the City land be set?
  - Conceptual pro forma; including an estimate of cost for the reconstruction of Parkside Hall.
  - Define the preferred structure as well as other workable alternatives?

#### 4. Financial Capacity

Two copies of the Financial Capacity materials as set forth in this section must be submitted under sealed, separate cover to: Office of Economic Development, 200 E. Santa Clara, 17<sup>th</sup> Floor, San Jose, CA 95113. **These materials must be delivered no later than 5:00 p.m. PDT on March 20, 2015.**

a) Information that demonstrates the respondent's financial relationships (contact information) and capacity to implement the proposed project.

b) Identify the specific relationships (and contact information) for the entity(s) that provided the debt and equity invested in the projects identified in the "Developer's Experience" section.

c) Identify the respondent's current/active debt and equity status. San Jose is seeking evidence from the respondent, in a form reasonably acceptable to San Jose, that the respondent has the ability to secure the funds required to meet commitments to construct the proposed project. Evidence provided must demonstrate to San Jose's reasonable satisfaction that the respondent has sufficient uncommitted funds to satisfy the equity obligation for development of the project. Respondents can decide on the most appropriate evidence to provide. Examples of such evidence could include: financial statement, letter from major

regional or national equity investor confirming the willingness to invest stated equity amount necessary to construct the project, etc. Information on the comparable project experience is not intended to be a substitute for this requirement, but will also be taken into consideration.

## 5. Evaluation Criteria

In the selection process, emphasis will be placed on the directly relevant qualifications and financial capacity of the respondent. Submittals will be evaluated based upon the following:

1. The development concept for the Site.
2. The design elements and quality.
3. The development schedule.
4. Experience of the developer in the construction of high-density urban mixed-use projects.
5. Demonstrated ability to finance the project.
6. Understanding of the regulatory approval process, as reflected in the developer's advisors and consultant team, business terms and conceptual development schedule.
7. Demonstrated successful community outreach experience.
8. Demonstrated successful public/private partnership projects.
9. Developer's acceptance of RFQ terms, completeness of submissions and compliance with the submission requirements of the RFQ.
10. Establishment of clear lines of responsibility within the team upon which the City can rely during negotiations and implementation of the project.
11. Ability of the developers and architects to implement high quality development projects within budget and with timely project delivery, including a limitation on claims or delays that may affect project timeliness.
12. Explanation of the proposed project's contribution to overall the City's goals, including housing, hotels, office, retail, and Downtown development synergy and strategies.
13. What is the fiscal and economic impact to the Tech Museum and the City?
14. Other factors as appropriate.

Moreover, as indicated in the body of this RFQ, the City staff will review all submissions and evaluate for:

Proposal Responsiveness	Pass/Fail
Developer Minimum Qualifications	Pass/Fail
Financial Capacity and Ability to Finance Project	40%
Vision Statement/Conceptual Project Description	25%
Assembled Team with Similar Project Experience	15%
Public/Private Partnership Experience	10%
Local Business Preference	5%
Small Business Preference	5%

As indicated in the body of this RFQ, City Staff will determine the final award recommendation based on responses that represent the highest scores to the information requested in this RFQ and any follow up discussions or presentations as requested by the City.

## **6. Waiver**

After a review of the RFQ submittals, the City, in its sole discretion, may invite one or more respondents for interviews and to enter into an ENA, or may choose not to proceed with development of the Site at this time. There is no guarantee that the City will decide to move forward with any proposed project based on the RFQ submittals.

## **ATTACHMENT C**

### **CITY OF SAN JOSE: BUSINESS COOPERATION PROGRAM**

#### **What Is the Business Cooperation Program (BCP)?**

The BCP is an opportunity for the City and your company to work together to allocate the local 1% use tax to the City of San Jose. In return, the City will reimburse the company a portion of the local tax that the City receives.

#### **Examples of Use Tax Applications**

- Purchases from out of state
- Sales Subject to Use Tax
- Leases
- Construction

Participation in this innovative program results in the following benefits to companies that participate:

- Reduces the company's tax liability in terms of allocation errors from 3rd party vendors
- Enhances City revenue without increasing additional tax liabilities to businesses.
- Provides an additional opportunity for the company to be publicly recognized for the contributions it makes to the community.

#### **Process**

BCP participating companies who purchase or sell equipment, materials and fixtures from out-of-state vendors will remit use tax to the State of California using either a:

- Direct Pay Permit or
- Sub-seller's Permit

Firms will designate "San Jose" as the place of first functional use of the equipment. The City will pay a percentage of the additional revenue to the company for the

administrative burden of monitoring and allocating the tax.

#### **Business Cooperation Example:**

Purchase price of widget	\$5,000,000
Santa Clara Co. tax rate	8.75%
Use Tax Received by CA Board of Equalization	\$437,500
CA and Santa Clara Co. share	7.75% or \$387,500
City of San Jose share (1%) of purchase price	\$50,000
Company is reimbursed 20%	\$10,000
Resulting San Jose share	\$40,000

#### **Frequently Asked Questions**

##### **Do other communities use this program?**

*Yes, the California State Board of Equalization has provided the two options—Sub-seller's Permit and Direct Pay Permit—to allocate use tax to communities.*

##### **Is there a cost?**

*There is no cost to obtain a Direct Pay Permit or a Sub-seller's Permit.*

##### **Does the company pay more tax?**

*No. No more tax is paid than normally assessed on purchases. The difference is that the liability for paying the tax is now controlled by the business which has the liability for paying the tax.*



### Getting Started

Getting started with the Business Cooperation Program is simple as 1-2-3.

1. Contact the Office of Economic Development (OED) or Municipal Revenue Advisors (MRA) regarding your interest in the Program. MRA has been engaged by the City to assist businesses in evaluating program benefits and to implement and process rebate claims.
2. MRA will determine if your particular purchase is subject to use tax and is consistent with the State approved allocation process.
3. MRA will assist you with either acquiring a Sub-sellers permit or Direct Pay Permit.

Once a Sub-sellers permit or Direct Pay Permit is in place, you are ready to accrue and remit the applicable tax owed on purchases.

### Claims Process

MRA will assist companies participating in the Business Cooperation Program by preparing a claim for a City rebate 45 days after the close of the reporting quarter. City staff will verify the claim to ensure the California State Board of Equalization has received the use tax allocation. Upon verification, the City will process the appropriate amount for the participating company as outlined below.

Net New Use Tax Received by the City of San Jose	Rebate Percentage
Tier 1: 0-\$200,000	20%
Tier 2: \$200,001-\$500,000	25%
Tier 3: \$500,001 and greater	30%

If the total allocation for four consecutive quarters exceeds Tier One or Tier Two, there will be a one-time true up payment in the fourth quarter from the City at the next higher Tier. However, if a firm over four consecutive quarters does not exceed Tier one threshold, they receive the minimum 20%.

If you have questions or if you would like to set up an introductory meeting, please contact:

John Lang  
City of San Jose  
Office of Economic Development  
p: 408.535.8178  
f: 408.292.6719  
[john.lang@sanjoseca.gov](mailto:john.lang@sanjoseca.gov)  
or  
Leslie Parks  
MRA's Local Representative  
p: 408 264-1601 office/fax  
[parksopensdoors@gmail.com](mailto:parksopensdoors@gmail.com)

### Need Other Business Assistance?

The Office of Economic Development also provides the following business services and resources to help companies grow and expand in the City of San Jose:

- Foreign Trade Zone
- Business Incubators/Accelerators
- Site Selection Assistance
- Industry Intelligence
- Trade Area Demographic and Socio-Economic Indicators
- Workforce Assistance(recruitment, training)
- Permitting Assistance

If you would like information about these programs or need assistance, please contact John Lang.

## **ATTACHMENT D**

### **EXCLUSIVE NEGOTIATIONS AGREEMENT**

This Exclusive Negotiations Agreement ("Agreement") is made and entered into this \_\_\_ the day of November, 2015 ("Effective Date"), by and between THE CITY OF SAN JOSE, a municipal corporation of the State of California, ("City," ) and \_\_\_\_\_ a California \_\_\_\_\_ ("Developer").

#### **RECITALS**

A. City is the owner of the property located at 180 Park Avenue in San Jose, commonly referred to as Parkside Hall and more particularly described on Exhibit A, attached hereto and incorporated herein by this reference ("Property").

B. Developer is a \_\_\_\_\_ that develops \_\_\_\_\_ in the state of California.

C. Developer was selected by City through a Request for Qualifications process to oversee the development of the Property ("Project").

D. The City now desires to offer Developer the opportunity to exclusively negotiate with the City for the development of the Property.

NOW, THEREFORE, in consideration of the mutual covenants and promises hereinafter set forth, the parties hereby agree as follows:

#### **1. Good Faith Negotiations.**

Subject to all terms and conditions of this Agreement, the City and Developer agree for the time period set forth below to negotiate diligently and in good faith towards the preparation of a ground lease or purchase and sale agreement, construction agreement and any other project agreement ("collectively, Project Agreement") which will involve the development of the Property for the \_\_\_\_\_ project ("Project"). It is expressly understood and agreed by the parties that this is a contract regarding negotiations only and does not convey any interest in the Property or a potential agreement or constitute any approval whatsoever of any proposed project. By its execution of this Agreement, the City is not committing to (a) any disposition of land to Developer; (b) the ability to obtain any approvals required from the City to use the Property for the proposed Project or (c) any other acts requiring the subsequent independent exercise of discretion by the City, or its departments. It is further agreed and understood that this Agreement does not imply any obligation on the part of the City to enter into any agreement that may result from the negotiations contemplated herein.

#### **2. Term of Agreement.**

A. The term of this Agreement shall be for a period of Six (6) months from the date of final execution by the parties ("Initial Term") unless earlier terminated or extended as provided in this Section 2 or Section 14.

B. The Director of Economic Development, acting on behalf of the City, shall have the right to extend the Initial Term of this Agreement, in increments of three (3) month time periods, up to an additional one (1) year ("Extended Term"). The decision to extend the Initial Term shall be at the sole and absolute discretion of the City Manager. If the City elects to extend the Initial Term, the City shall notify Developer in writing not less than thirty (30) days prior to expiration of the Initial Term ("Notice of Extension").

3. Project Milestones. Within the time periods set forth in the Schedule of Performance attached hereto as **Exhibit B** ("Schedule of Performance"), Developer shall have completed the following milestones:

A. Structural and Feasibility Analysis. Developer shall have commenced and completed a structural and feasibility analysis for the proposed Project ("Feasibility Analysis").

B. Environmental Due Diligence. Developer shall have commenced and completed any required environmental due diligence required for the proposed Project ("Environmental Analysis").

C. Construction Plans. Developer shall have prepared construction plans, if any, for the proposed Project.

D. Ground Lease or Purchase and Sale Agreement. Developer shall agree during the time period set forth above to negotiate diligently and in good faith towards the preparation of either a ground lease or purchase and sale agreement.

4. Right of Entry. During the Initial Term or any extension thereof, Developer, its representatives, consultants, contractors, agents and employees shall have the right to enter the Property at all reasonable times for the purpose of conducting any tests, studies, analysis or other work necessary to perform the milestones set forth above. The Developer shall provide the City with written notice prior to entry on the Property. The Developer shall have access to all data and information on the Property available to the City, but without warranty or representation by the City as to the completeness, correctness or validity of such data and information. Copies of any tests, studies or analysis obtained or made by the Developer on the Property shall be provided to the City. Any preliminary work by the Developer shall be undertaken only after securing any necessary permits from the appropriate governmental agencies.

5. Disposition of Property. Within the time period set forth in the Schedule of Performance, Developer and the City shall negotiate the terms and conditions of a proposed Project Agreement. It is expressly acknowledged and agreed by the parties that, until and unless a Project Agreement is signed by Developer and approved by the City Council, in its sole and absolute sole discretion, any drafts or other communications resulting from performance of this Agreement shall not be used to impose any legally binding obligation on the City or as evidence of any oral or implied agreement by the City to enter into a legally binding document.

6. Disclosure of Confidential Information. Developer acknowledges that the City is subject to the California Public Records Act ("Act"). The Act generally provides that written documents retained by the City are subject to disclosure upon the request of any third party except for specific limited exceptions provided for in the Act. Developer shall designate as "Confidential" any information which Developer provides to the City which Developer desires to keep

confidential. If a request for disclosure of any information designated as “Confidential” by Developer is made under the Act, the City shall notify Developer in writing and Developer shall have the opportunity to object to the release of such information.

7. Conflict of Interest.

A. Developer shall at all times avoid conflict of interest or appearance of conflict of interest under any applicable state, federal or local laws, rules and regulations in the performance of this Agreement. Developer shall disclose any conflict of interest, or potential conflict of interest, which exists or arises at any time during the term of this Agreement. For purposes of this Section, any conflict of interest of a principal, officer, stockholder, partner, joint-venturer, employee or other associate of Developer shall be conclusively deemed to be a conflict of interest of Developer.

B. City shall have the right to treat any violation of this Section as a material breach of this Agreement, and shall have the right to terminate the Agreement and pursue any and all legal or equitable remedies for said breach of this Agreement.

8. Development Costs. Developer expressly acknowledges that all expenses and costs it may incur during the term of or as a result of this Agreement are its sole obligation and responsibility and done at its sole risk, including, but not limited to, any costs associated with any proposed Project and any costs incurred to prepare the necessary studies and analysis required for any proposed Project.

9. California Environmental Quality Act. The California Environmental Quality Act (CEQA) is applicable to any Project contemplated by this Agreement. Environmental clearance must be obtained prior to obtaining City Council approval for any project proposed.

10. Distinction from Regulatory Authority of the City. Developer understands and agrees that this Agreement does not and shall not be construed to indicate or imply that the City, acting as a regulatory or permitting authority, has hereby granted or is obligated to grant any approval or permit required by law for the development of the Project on the Site as contemplated by this Agreement.

11. Public Hearing. If the negotiations contemplated herein culminate in the execution of a Project Agreement will be brought forward for consideration by the City Council, provided, however, such Project Agreement shall become effective only after having been considered and approved by the City Council in their sole and absolute discretion following any public hearing or other actions required by law. Notwithstanding any other provision of this Agreement, Developer expressly agrees and acknowledges that the timing of any presentation of the Project Agreement for City Council consideration shall be in the City Manager’s sole discretion.

13. Non-discrimination. Developer shall not discriminate, in any way, against any person on the basis of age, sex, race, color, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin in connection with or related to the performance of this Agreement.

14. Termination by City. If Developer does not comply in a timely and diligent manner with any material obligation of Developer under this Agreement, City, at its option, may terminate this Agreement at any time by written notice to Developer. The Director of Economic

Development may terminate this Agreement on behalf of the City. The termination shall be effective upon Developer's receipt of City's written notice.

15. Indemnification. Developer shall defend, indemnify and hold harmless the City of San Jose, and its officers, employees and agents against any claim, loss or liability arising out of this Agreement or resulting in any way from work performed under this Agreement, including any work performed on the Property pursuant to the provisions of Section 4 above, by Developer, its representatives, consultants, contractors, agents or employees. This indemnification shall survive the expiration or other termination of this Agreement.

16. Notices. All notices and other communications required or permitted to be given under this Agreement shall be in writing and may be delivered by hand, by facsimile transmission with verification of receipt, or by United States mail, postage prepaid and return receipt requested, addressed to the respective parties as follows:

To City: City of San Jose  
Attention: Office of City Manager,  
Director of Economic Development  
200 East Santa Clara Street, 17<sup>th</sup> Floor  
San Jose, CA 95113

To Developer:

or to such other address as any party may designate by notice in accordance with this Section.

A copy of any notice of a legal nature, including, but not limited to, any claims against City, its officers or employees shall also be served in the manner specified above to the following address:

City of San Jose  
Richard Doyle, City Attorney  
200 East Santa Clara Street 16<sup>th</sup> Floor  
San Jose, CA 95113

17. Waiver of Lis Pendens. It is expressly understood and agreed by the parties that no lis pendens shall be filed with respect to this Agreement or any dispute or act arising from it.

18. Time of Essence. It is understood and agreed by the parties that time is of the essence in the performance of the obligations of this Agreement. Unless otherwise expressly provided in this Agreement, any failure on the part of Developer to perform according to the Schedule of Performance shall constitute, at City's sole and absolute discretion, grounds for termination of this Agreement by City.

19. Assignment. Developer may not transfer or assign any or all of its rights or obligations hereunder except with the prior written consent of City which may be granted or withheld in City's sole and absolute discretion, and any such attempted assignment without the prior written consent of City shall be wholly void and of no effect.

20. No Third Party Beneficiaries. This Agreement is made and entered into solely for the benefit of the City and Developer and no other person shall have any right of action under this Agreement.

21. Limitation of Liability. Notwithstanding anything to the contrary at law or equity, in the event of any breach of this Agreement by the City, the sole and exclusive remedy of Developer hereunder shall be the recovery of Developer's actual out of pocket costs incurred by Developer to third parties to satisfy its obligations under this Agreement. In no event shall Developer be entitled to "expectation damages" i.e., any amounts that Developer would expect to gain were an agreement ever executed, including, without limitation, any amount for potential lost profits. Nor shall Developer be allowed to recover any damages for lost business opportunity, or for any indirect or consequential damages.

22. Waiver. Developer agrees that waiver by City of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition. The acceptance by City of the performance of any work or services by Developer shall not be deemed to be a waiver of any term or condition of this Agreement.

23. Governing Law. The law governing this Agreement shall be that of the State of California.

28. Venue. In the event that suit shall be brought by either party hereunder, the parties agree that trial of such action shall be exclusively vested in a state court in the County of Santa Clara, or where appropriate, in the United States District Court for the Northern District of California, San Jose, California.

24. Prior Agreements and Amendments. This Agreement, including all Exhibits listed below and attached hereto, represents the entire understanding of the parties as to those matters contained herein. No prior oral or written understanding shall be of any force or effect with respect to those matters covered hereunder. This Agreement may only be modified by a written amendment duly executed by the parties to this Agreement.

Exhibit A	Legal Description
Exhibit B	Schedule of Performance

WITNESS THE EXECUTION HEREOF on the day and year first hereinabove written.

“City”

APPROVED AS TO FORM:

CITY OF SAN JOSE

\_\_\_\_\_  
Deputy City Attorney

By: \_\_\_\_\_  
Julie Edmonds-Mares  
Interim Deputy City Manager

“Developer”

\_\_\_\_\_, a California \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**(ATTACHMENT D)**

**EXHIBIT A**

**DESCRIPTION OF PROPERTY  
LEGAL DESCRIPTION**



**(ATTACHMENT D)**

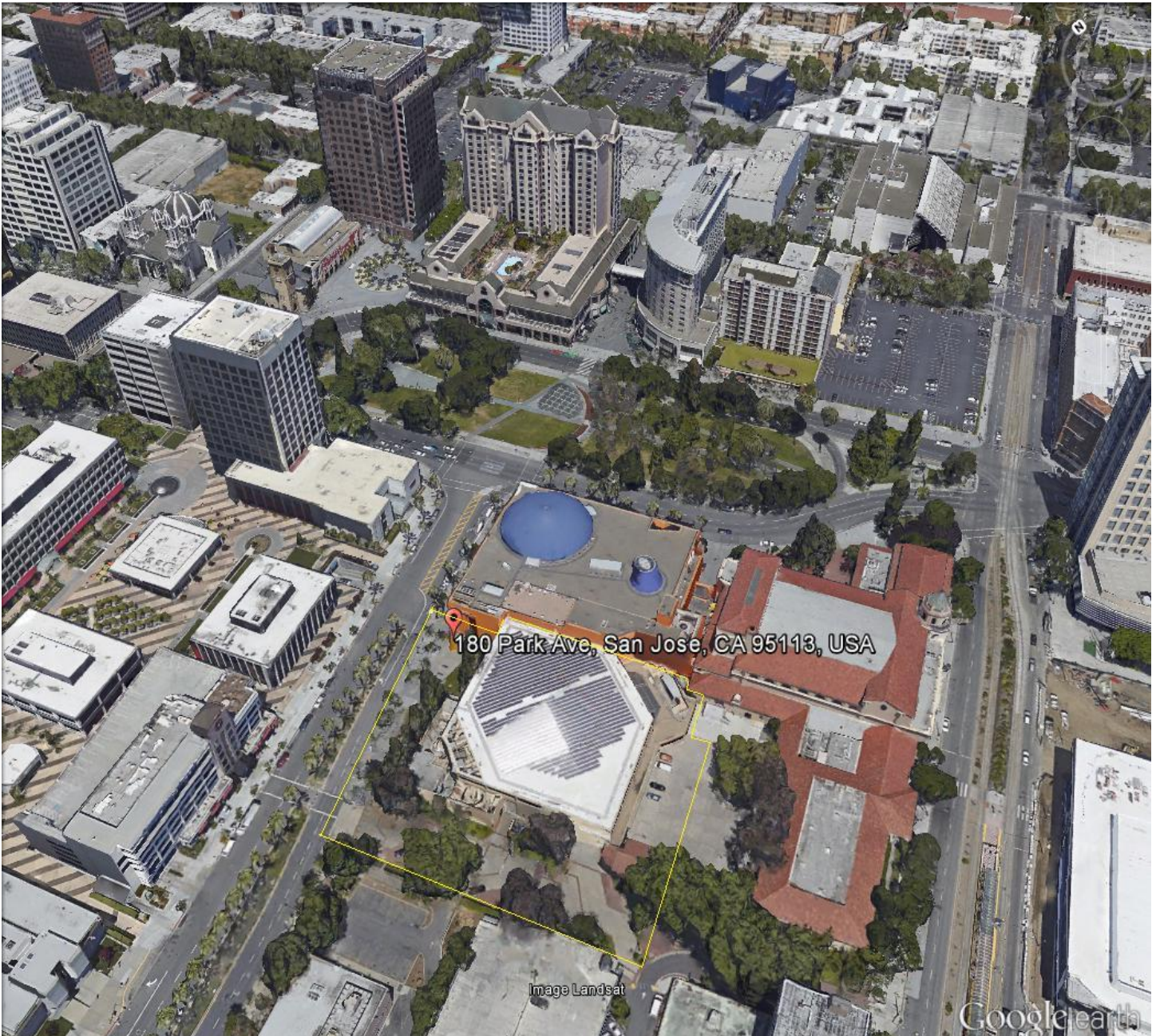
**EXHIBIT B**

**SCHEDULE OF PERFORMANCE**

Task	Date
------	------

## **EXHIBIT A**

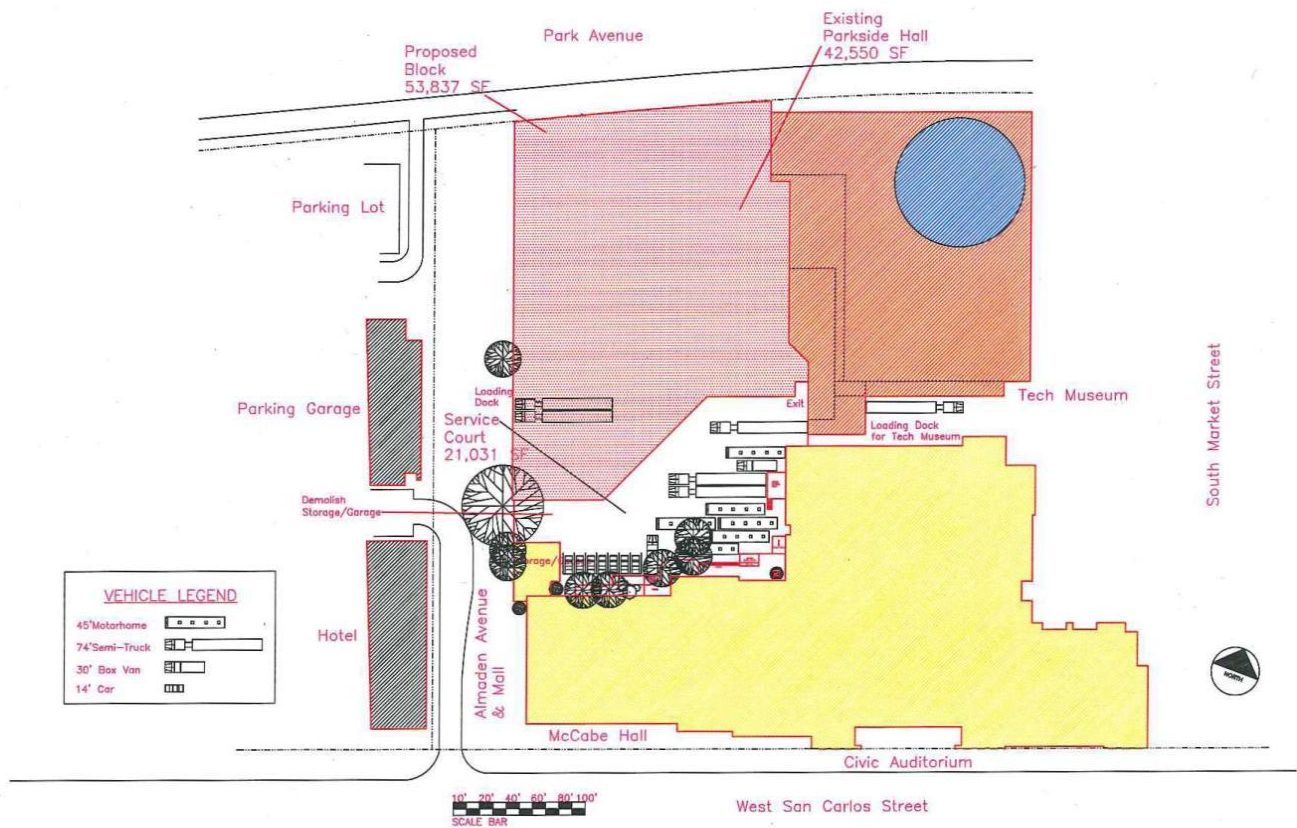
### **Aerial Photo of Approximate Site**





## EXHIBIT B

### Approximated Block Plan

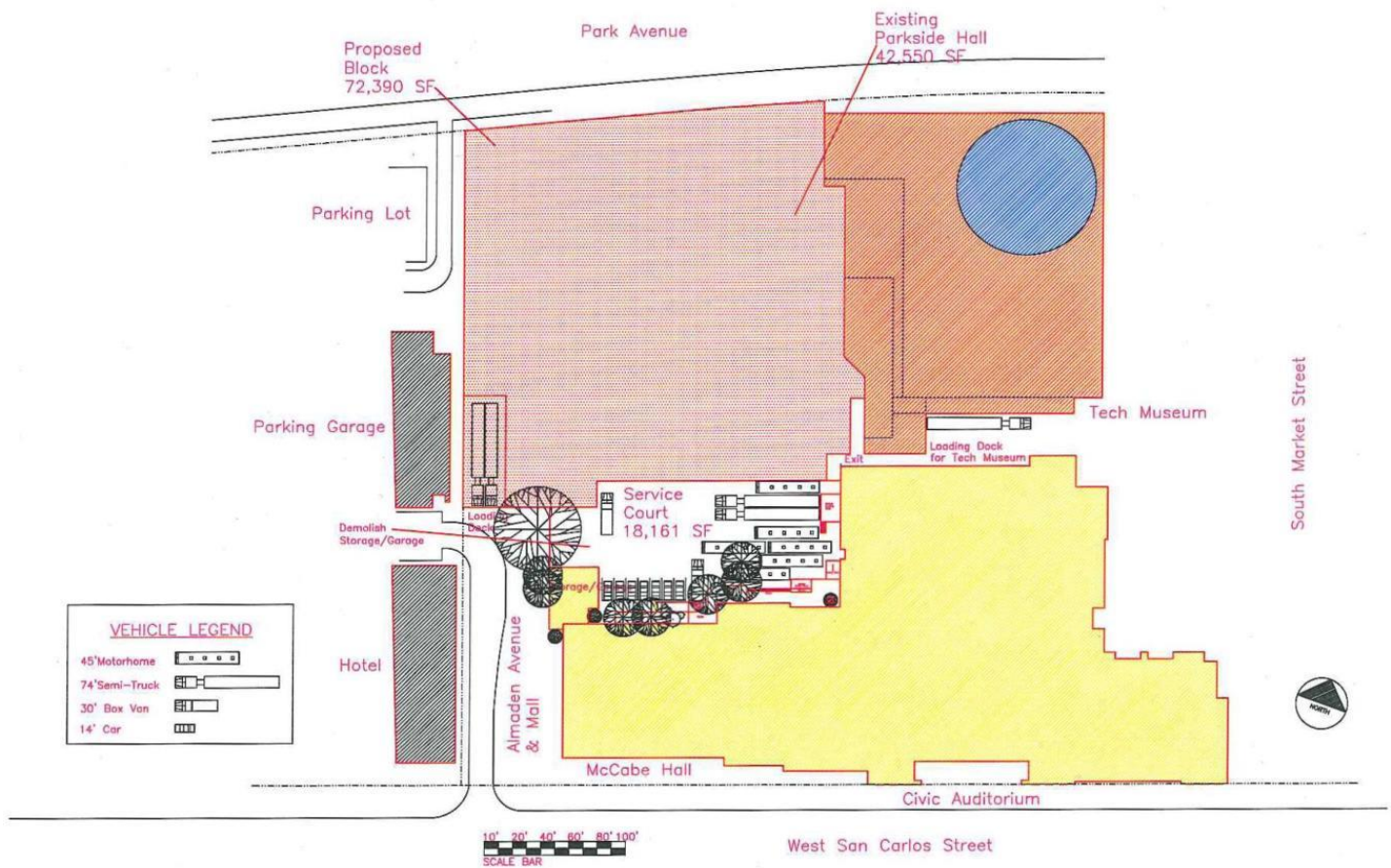


## PROPOSED BLOCK PLAN-1A — PARKSIDE PLAZA

PW-DRB 11/21/2014

## EXHIBIT B-1

### Approximated Block Plan



PROPOSED BLOCK PLAN-2A — PARKSIDE PLAZA  
PW-DRB 11/21/2014

# EXHIBIT C

## Existing Parcel Map

San Jose, CA, 2013-2014 - 258-42-030, 184 S MARKET ST, SAN JOSE, CA 95113, Sheet: 1 of 1

